IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

WRIT PETITION NO : 8246 of 1994

Between:

1. M/S Mahavir Enterprises (India) Private Limited, rep. By its Managing Director Sri K.Praful K.Dharod, Kanchanjunga Complex, King Koti Road, Hyderabad.

2. M/S Mahavir Brothers, rep. By its Managing partner, Praful K.Dharod, Kanchanjunga Complex, Kingkoti Road, Hyderabad

..... PETITIONERS

AND

1 Union of India rep. By its Secretary, Ministry of Civil Supplies, Consumer Affairs and Public Distribution, New Delhi
2 Director of Weights & Meaures Ministry of Civil Supplies Consumer Affairs and Public Distribution , 12-A Jamnagar House, New Delhi- 110 001
3 Govt. of A.P. rep. By its Secretary, Civil Supplies (S.III W & M) Department Secretariat Hyderabad.
4 Controller of Legal Metrolgoy (W & M), 209, P.W.G.Building, Gandhinagar, Hyderabad- 500 380

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction, especially one in the nature of Mandamus i) declaring the provisions of Section 39 of Weights & Measures Act, 1976 and the Standards of Weights & Measures (Packaged Commodities) Rules, 1977 and the concerned provisions read with section 33 of the Standards of Weights & Measures (Enforcement) Act, 1985 do not apply to the single unit items which are being marketed by the petitioners ii) Declare that the explanation given to the Rule 2 (1) of the Standards of Weights & Measures (Packaged commodities) Rules, 1977 as illegal, arbitrary ultra virus, contrary to the object of the Act, over and above the scope of the Act and the definition of pre-packaged commodity.

Counsel for the Petitioner:MR.K.VASUDEVA REDDY

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY
Standing Counsel for Central Government and G.P. for Civil Supplies.

The Court Made the Following O R D E R:

At the request of the petitioners, this writ petition was directed to be listed along with Writ Petition No. 9205 of 1993 and batch. The note put up by the office reveals that those Writ Petitions have already been disposed of by this Court. The issue relates to constitutional validity of Section 39 of Weights & Measure Act, 1976 (for short 'the Act') and the Standards of Weights & Measures (Packaged Commodities) Rules, 1977. There is no factual foundation as such is laid suggesting that the provisions suffer from any constitutional vice. It is a case where the petitioners are indulging in speculative litigation.

That at any rate, prosecution appears to have been initiated against the petitioners in the year 1993 on the ground that they have violated the provisions of the Act and the Rules framed thereunder. The writ petition is directed against the show cause notice. It was open to the petitioners to file an explanation to the said show cause notice and instead of doing so, they have chosen to file the present writ petition.

That at any rate, the show cause notice dated
15-07-1993, has been interdicted by this Court and therefore, it will not be appropriate on the part of the respondents to proceed against the petitioners pursuant to the notice issued in the year 1993. That if the respondents still choose to proceed against the petitioners, it shall be open for them to proceed against the petitioners after issuing a fresh show cause notice.

The Writ Petition is accordingly disposed of. No order as to costs.

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B.SUDERSHAN REDDY, J

01-07-2004.

MJL/*

ASSISTANT REGISTRAR

//TRUE COPY //

SECTION OFFICER

To

1 Secretary Ministry of Civil Supplies
Union of India Consumer Affairs and Public Distribution
New Delhi
2 Director of Weights & Meaures Ministry of Civil Supplies
Consumer Affairs and Public Distribution , 12-A
Jamnagar House, New Delhi- 110 001
3 Secretary . Civil Supplies (S.III W & M) Department ,
Government of AP Secretariat Hyderabad
4 Controller of Legal Metrolgoy (W & M), 209, PWG Bldg, Gandhinagar,
Hyderabad- 500 380.

5. 2 CCs to the G.P. for Civil Supplies, High Court Bldgs, Hyd (OUT)

6. 2 CD copies.